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MAY 31 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC MAIL ROOM

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)
Treatment of Designated)
Entities)

PP Docket No. 93-253

DOCKET FILE COPY ORIGINAL

To: The Secretary

EX PARTE PRESENTATION

MasTec, Inc. submits an original plus one copy of this memo and the attached letter (sent ex parte to Commissioner James H. Quello) for inclusion in the record of the above-referenced rule making proceeding.

Respectfully submitted,


Matthew L. Leibowitz
Counsel for MasTec, Inc.

May 27, 1994

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May 27, 1994

Via Facsimile (202) 632-0163

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, NW Room 802
Washington, DC 20554

Re: Personal Communications Services

Dear Commissioner Quello:

On Tuesday, May 31, 1994, I am meeting with Commissioner Ness and Commissioner Chong to discuss minorities' and women's participation in PCS. In addition, I have a meeting on Wednesday, June 1st, at 8:00 a.m. with Rudy Baca of your Office. If at all possible, I would like to meet with you on Tuesday or early Wednesday morning to express our concerns about recent reports that the FCC may not adopt critical mechanisms which are necessary to implement the statutory requirement of Section 309 (j)(4)(D) of the Communications Act.

We believe PCS will create an historic and unique opportunity to expand the ownership and control of our telecommunications industry to include minorities and women. However, in order for minorities and women to play a meaningful role in PCS, and to raise the requisite capital to compete in the PCS marketplace, the Federal Communications Commission must implement a multi-level flexible approach including a 30 MHz set-aside on the MTA basis, installment payments and tax certificates.

I am attaching to this letter a generic financial cost analysis of constructing a PCS for Miami. Please note that this cost analysis does not include the price of the acquisition of

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the frequencies through the auction process or any operating costs. While the analysis was done for the Miami MTA and inclusive BTAs, we believe it is a fair generic representation of most major markets around the country. As you will note, the analysis includes the following variables: a 30 MHz system, a 20 MHz system and a 10 MHz system. In addition thereto, each frequency block is then divided into the Miami MTA and the major BTAs that are included with the MTA (but not all of the BTAs).

The significant conclusion that can be drawn from this analysis is that the cost of construction alone even for the smallest alternative, i.e., a 10 MHz block on the Miami BTA basis, is in excess of \$33,000,000. I think it is fair to state that this will exceed the financial capacity of any Designated Entity that is interested in pursuing participation of PCS in Miami. While it is true that the cost for the smaller BTAs are significantly less, such as a system in Fort Pierce which would only cost a little over \$3,000,000, but when viewed on a potential subscriber basis as a stand alone operation, this is simply an invitation for economic disaster. Thus, one must fairly conclude that the operating assumption by some Designated Entities that they want the FCC to establish the smallest possible set-aside to ensure their ability to independently own and operate a PCS system is simply not economically feasible. Furthermore, I believe that any PCS system without at least approximately 30 MHz of spectrum will be difficult to finance.

I would also like to advise you that in light of the recent concerns that have been expressed by the FCC staff on the constitutionality of set-asides, we are in the process of preparing an updated constitutional legal Memorandum discussing the constitutionality of set-asides. This Memorandum is being prepared by Arthur England who is the former Chief Justice of the Florida Supreme Court. A copy of the Memorandum will be forwarded to you within the next few days.

In this context, it is critical that the FCC focus on the evaluation of whether or not any bidding credit is economically the functional equivalent of a set-aside. We strongly believe that the answer is no. This belief is supported by the fact that it is overwhelmingly likely that the major telecommunications entities in this country, including MCI, Sprint, and the various Bell operating companies, will overbid the value of the frequencies due to their own strategic needs. Thus, just as we saw in the Paramount acquisition, the real market value and the ultimate acquisition cost will vary significantly. While it is

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true that Paramount represented the last major studio available, it is also true that neither Mr. Diller nor Viacom required Paramount for economical survival. This is not the case when it comes to PCS. Most Bell operating companies and long distance carriers view PCS as critical to their economic survival. Thus, not only will they overbid the fair market value, as was the case in Paramount, but I think it is safe to say that when it comes to survival they will bet the ranch, if necessary. Accordingly, it is simply impossible to, at this stage, estimate what a necessary bidding credit will be in order to overcome the anticipated economic survival overbidding. Thus, bidding credits are simply not the functional equivalent of set-asides. As a result, bidding credits cannot fulfill the Congressional mandate to ensure that Designated Entities participate in PCS.

I will call your office on Tuesday morning to see if a meeting is possible.

Pursuant to FCC rules and regulations, I will file with the Office of the Secretary an appropriate Ex Parte Memorandum of this letter.

Sincerely yours,



Matthew L. Leibowitz
Counsel for MasTec, Inc.

MLL/mdr

Enclosure

cc: Rudolfo M. Baca, Esq., Legal Advisor
Jorge Mas Canosa, MasTec, Inc.

[illegible]

| MTA vs BTA Costs | | | | | | |
|--|--------------|--------------|-------------|-------------|-------------|--------------|
| CDMA 20MHz | | | | | | |
| | Miami MTA | Miami BTA | Ft Myers | Ft Pierce | Naples | West Palm |
| Sites | 215 | 121 | 20 | 11 | 18 | 46 |
| Base | 21500000 | 12100000 | 2000000 | 1100000 | 1800000 | 4600000 |
| Year 1 | 17500000 | 9450000 | 1800000 | 875000 | 1500000 | 3825000 |
| Year 2 | | | | | | |
| Year 3 | | | | | | |
| Year 4 | | | | | | |
| Year 5 | 1200000 | 1050000 | 75000 | | | 75000 |
| Year 6 | 1725000 | 1200000 | | 180000 | 75000 | 300000 |
| Year 7 | 1800000 | 1200000 | 150000 | 75000 | | 525000 |
| Year 8 | 2800000 | 1650000 | | 375000 | 75000 | 450000 |
| Year 9 | 2775000 | 1575000 | 75000 | | 225000 | 900000 |
| Year 10 | 1875000 | 1050000 | 75000 | 75000 | 225000 | 450000 |
| Eq Total | \$51,125,000 | \$28,195,000 | \$4,175,000 | \$2,750,000 | \$3,700,000 | \$11,125,000 |
| Site Const | 9875000 | 5445000 | 900000 | 495000 | 720000 | 2070000 |
| Towers | 2840500 | 1703000 | 230750 | 123500 | 188500 | 588000 |
| Transmission | 4300000 | 2420000 | 400000 | 220000 | 320000 | 920000 |
| Shelters | 1810000 | 801250 | 201250 | 115000 | 162500 | 315000 |
| Engineering | 2500000 | 1452000 | 240000 | 132000 | 192000 | 552000 |
| Site Total | \$21,008,500 | \$11,821,250 | \$1,972,000 | \$1,085,500 | \$1,583,000 | \$4,442,000 |
| Total Cost | \$72,130,500 | \$40,016,250 | \$6,147,000 | \$3,835,500 | \$5,283,000 | \$15,567,000 |
| Operational costs are not included in the above numbers | | | | | | |
| The above data was obtained from a report "PCS Market Demand and System Engineering" | | | | | | |
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| Economic and Management Consultants International, Inc. (EMCI) | | | | | | |
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| | | | | | | |

| MTA vs BTA Costs | | | | | | |
|--|---------------|--------------|-------------|-------------|-------------|--------------|
| | CDMA 10MHz | | | | | |
| | Miami MTA | Miami BTA | Ft Myers | Ft Pierce | Naples | West Palm |
| Sites | 215 | 121 | 20 | 11 | 16 | 46 |
| Base | 21500000 | 12100000 | 2000000 | 1100000 | 1600000 | 4600000 |
| Year 1 | 16125000 | 9450000 | 1500000 | 975000 | 1500000 | 3825000 |
| Year 2 | | | | | | |
| Year 3 | | | | | | |
| Year 4 | | | | | | |
| Year 5 | | | | | | |
| Year 6 | | | | | | |
| Year 7 | | | | | | |
| Year 8 | | | | | | |
| Year 9 | | | | | | |
| Year 10 | | | | | | |
| Eq Total | \$37,625,000 | \$21,550,000 | \$3,900,000 | \$2,075,000 | \$3,100,000 | \$8,425,000 |
| Site Const | 9875000 | 5445000 | 900000 | 485000 | 720000 | 2070000 |
| Towers | 2040000 | 1703000 | 230750 | 123500 | 188500 | 586000 |
| Transmission | 4300000 | 2420000 | 400000 | 220000 | 320000 | 920000 |
| Shelters | 1610000 | 801250 | 201250 | 115000 | 162500 | 315000 |
| Engineering | 2580000 | 1452000 | 240000 | 132000 | 192000 | 552000 |
| Site Total | \$21,005,500 | \$11,821,250 | \$1,972,000 | \$1,085,500 | \$1,583,000 | \$4,442,000 |
| Total Cost | \$58,630,500 | \$33,371,250 | \$5,772,000 | \$3,160,500 | \$4,683,000 | \$12,867,000 |
| Operational costs are not included in the above numbers | | | | | | |
| The above data was obtained from a report "PCS Market Demand and System Engineering" Copyright January 1994 Moffet, Larson and Johnson, Inc (MLJ) and Economic and Management Consultants International, Inc. (EMCI) | | | | | | |

| MTA vs BTA Costs | | | | | | |
|--|-----------|-----------|----------|-----------|--------|-----------|
| CDMA | | | | | | |
| Subscriber Assumptions | | | | | | |
| | | | | | | |
| | Miami MTA | Miami BTA | Ft Myers | Ft Pierce | Naples | West Palm |
| | 30 MHz | 20 MHz | 20 MHz | 20 MHz | 20 MHz | 20 MHz |
| | | 10 MHz | 10 MHz | 10 MHz | 10 MHz | 10 MHz |
| Year 1 | 4307 | 1434 | 147 | 99 | 39 | 433 |
| | | 598 | 61 | 41 | 16 | 181 |
| Year 2 | 10231 | 3378 | 358 | 241 | 95 | 1043 |
| | | 1407 | 149 | 101 | 40 | 435 |
| Year 3 | 34303 | 11225 | 1230 | 828 | 329 | 3541 |
| | | 4677 | 512 | 344 | 137 | 1475 |
| Year 4 | 69612 | 22575 | 2555 | 1712 | 688 | 7275 |
| | | 9488 | 1085 | 714 | 287 | 3031 |
| Year 5 | 128190 | 40550 | 4741 | 3170 | 1284 | 13350 |
| | | 16896 | 1975 | 1321 | 535 | 5582 |
| Year 6 | 183480 | 58405 | 7054 | 4705 | 1822 | 19843 |
| | | 24335 | 2958 | 1981 | 801 | 8185 |
| Year 7 | 213889 | 67375 | 8408 | 5584 | 2303 | 23150 |
| | | 28073 | 3503 | 2331 | 980 | 9846 |
| Year 8 | 240346 | 75059 | 9878 | 6423 | 2885 | 28348 |
| | | 31275 | 4032 | 2876 | 1111 | 10878 |
| Year 9 | 264391 | 81757 | 10822 | 7211 | 3016 | 29319 |
| | | 34086 | 4538 | 3005 | 1257 | 12216 |
| Year 10 | 290235 | 89882 | 12332 | 8077 | 3405 | 32552 |
| | | 37022 | 5097 | 3365 | 1418 | 13983 |
| | | | | | | |
| | | | | | | |
| The above data was obtained from a report "PCS Market Demand and System Engineering" | | | | | | |
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